

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANGELA CLEMENTE,
414 Ibis Court
Tuckerton, NJ 08087

Plaintiff,

v.

Civil Action No.

FEDERAL BUREAU OF
INVESTIGATION,
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

and

U.S. DEPARTMENT OF JUSTICE
935 Pennsylvania Avenue, N.W.
Washington, D.C. 205350

Defendants

COMPLAINT FOR INJUNCTIVE RELIEF
[Freedom of Information Act, 5 U.S.C. § 552]

JURISDICTION AND PARTIES

1. Plaintiff Angela CLEMENTE (“CLEMENTE”) brings this action
under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as
amended.

2. Plaintiff CLEMENTE is a well-known forensics intelligence analyst. She brings this lawsuit to enjoin the UNITED STATES DEPARTMENT OF JUSTICE (“DOJ”) and the FEDERAL BUREAU OF INVESTIGATION (“FBI”) from withholding information she has requested under the FOIA. She demands that, as provided by law, this information be promptly disclosed to her.

3. Over the past decade or so, Clemente has conducted an exhaustive examination of the relationship between notorious Mafia hit man GREGORY SCARPA, SR (“SCARPA”), also known as “The Grim Reaper,” and the FBI agent he reported to, FBI Supervisory Special Agent ROY LINDLEY DEVECCHIO (“DEVECCHIO”). CLEMENTE has spent years gathering information about the FBI’s relationship with SCARPA. She assisted the Brooklyn District Attorney in filing charges against DEVECCHIO. However, her efforts to obtain critical information from the FBI about this relationship were not accommodated prior to the filing of this lawsuit.

4. Defendant UNITED STATES DEPARTMENT OF JUSTICE (“CLEMENTE”) is an agency of the United States and has possession and control of information and records requested by CLEMENTE which are the subject of this action.

5. Defendant FEDERAL BUREAU OF INVESTIGATION ("FBI") is a component of the DEPARTMENT OF JUSTICE and has possession and control of information and records requested by CLEMENTE which are the subject of this action.

6. The NEW YORK FIELD OFFICE ("NYO") is a component of the UNITED STATES DEPARTMENT OF JUSTICE and has possession and control of information and records requested by CLEMENTE that are the subject of this action.

COUNT I: JUNE 26, 2011 REQUEST TO NEW YORK FIELD OFFICE

7. Plaintiff realleges the allegations set forth in Paragraphs 1-6 above.

8. By letter dated June 26, 2011, CLEMENTE submitted a FOIA request to the FBI's New York field office which requested 500 pages from the New York informant file on Gregory Scarpa, Sr. in the following order:

1. Any and all information related in any way to the murders of John Minerva and Michael Imbergamo, regardless of the dates of the documents.
2. Any and all information related in any way to the murders of Salvatore Scarpa and Matty Ianiello, regardless of the dates of the documents containing such information.
3. Any and all records in the New York informant file on Gregory Scarpa, Sr. in reverse chronological order from December 20, 1993 backwards until the total number

of pages provide, including those responding to items 1 and 2 above, total 500 pages.

See Exhibit 1.

9. CLEMENTE committed to pay costs for 400 of the 500 pages, the first 100 pages being free under the FOIA, but reserved her right to seek a public interest fee waiver. Id.

10. By letter dated July 12, 2011, FBIHQ acknowledged receipt of CLEMENTE's request and assigned it FOIPA Request No. 1169405.

See Exhibit 2.

11. By letter dated March 1, 2012, the FBI granted CLEMENTE's request for a waiver of copying fees. See Exhibit 3.

12. The FOIA requires each agency to "establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request. . . ." 5 U.S.C. 5 552(a)(7)(A).

13. The FOIA further provides that each agency shall "(B) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including-

(i) the date on which the agency originally received the request;

and

(ii) an estimated date on which the agency will complete action on the request.” 5 U.S.C. § 552(a)(7)(B).

14. Defendants have violated the statutory provisions set forth in 5 U.S.C. § 552 (a)(7)(A) and 5 U.S.C. § 552(a)(7)(B). See Exhibit 4.

15. On January 21, 2009, President Barack Obama issued a memorandum to the heads of all departments and agencies on the FOIA. Among other things, this memorandum directed agencies to respond to FOIA requests “promptly and in a spirit of cooperation.”

16. No further correspondence has been exchanged between the parties except as set forth below.

17. Plaintiff has exhausted her administrative remedies.

18. Plaintiff has a legal right under the FOIA to obtain the information she seeks, and there is no legal basis for the FBI’s denial of said right.

COUNT II: OCTOBER 30, 2011
REQUEST TO NEW YORK FIELD OFFICE

19. CLEMENTE realleges the allegations set forth in Paragraphs 1 - 6 and 14-19 above.

20. By letter dated October 30, 2011, CLEMENTE submitted a request to the the FBI's New York field office for "all records on or pertaining to Gregory Scarpa wherever they may be located or filed, in whatever form or format they are maintained. See Exhibit 5.

21. CLEMENTE's October 30, 2011 letter to the FBI's New York Office was delivered there on November 2, 2011. See Exhibit 6.

22. CLEMENTE requested that the FBI search its Central Records System ("CRS") for "all main files and all . . . cross-references." See Exhibit 5. She specified that in In providing cross-reference materials, the FBI should "provide not only the initial page of the cross-referenced document and those pages to which [SCARPA's] name is indexed but the entire document." Id. CLEMENTE further indicated that the FBI's "search of the CRS is not to be limited to the Universal Index component of the CRS [but it] must also search other components, including those specified in Negley v. F.B.I., 658 F.Supp.2d 50, n.3 (D.D.C.2009). Id.

23. CLEMENTE stated that the search of the electronic ("ELSUR") indices, required a search "for not only those ELSUR materials that Mr. Scarpa is the subject of, but also include[s] any 'mentions' or 'overhears'." Id.

24. CLEMENTE requested “all warrants or drafts of warrants based in whole or in part on information submitted by Mr. Scarpa. She also sought “all information submitted by Scarpa which was used to support the warrants or drafts of warrants based on information provided by him. Id.

25. CLEMENTE instructed that in conducting its search the FBI should “use all nicknames, aliases, pseudonyms, code names or code numbers used by, or applied to, Mr. Scarpa. In addition, when searching under Mr. Scarpa's name please employ all logical buildups, breakdowns and variations of his name.” Id.

26. CLEMENTE also requested that the FBI provide her with “photographic copies of all photographs of Mr. Scarpa. With respect to electronic surveillance materials, she wants not only the transcripts, logs and other written materials pertaining thereto, but also any audio or videotapes in the format in which they were recorded.” Id.

27. CLEMENTE's request also “includes ticklers, numbered and lettered subfiles, 1A envelopes, enclosures behind files (‘EBFs’), file covers, bulky exhibits (‘Bulkies’), control files, and ‘JUNE’ or ‘JUNE MAIL’ files or records. Id.

28. CLEMENTE further specified that the FBI's search "should include a search of the files in the Director's Office, the files or folders maintained by any FBI supervisory official in office safes, drawers or file cabinets, and the files maintained by Assistant FBI Directors, particularly including Cartha ("Deke") DeLoach and Clyde Tolson. Id.

29. CLEMENTE requested that the FBI search each FBI field office which maintains records on SCARPA for records responsive to her request. In support of this request she stated that FBI Headquarters is aware of all FBI field offices which maintain records SCARPA, whereas she is not. Thus, requiring her to submit requests to each of the approximately 59 field offices would be unduly burdensome and thwart the purpose of the FOIA to facilitate easy and prompt access to information. Id.

30. Lastly, CLEMENTE request that the FBI also provide the following records:

a. All index references to SCARPA, including not only Central Records System ("CRS") indices and ELSUR indices, but any informant or confidential source indices and any indices to any office, bureau, section, division, unit or other component of the FBI which may have records pertaining to him. Id.

b. All previous requests for information on SCARPA and all correspondence pertaining thereto, including not only Freedom of Information Act requests but congressional, news media or other requests. In particular, CLEMENTE directed that this should include the requests submitted by the Office of the United States Attorney for the Eastern District of New York. Id.

c. All worksheets or other form of inventory compiled in response to any request for information pertaining to SCARPA, including any computerized inventory listing the documents reviewed in response to this request. Id.

d. All search slips or other form of records used to instruct, guide and carry out the searches performed in response to this or prior requests for records on SCARPA. Id.

COUNT III: FEE WAIVER

31. CLEMENTE realleges the allegations set forth in Paragraphs 1 -6 and 14-18 above.

32. CLEMENTE requested a public interest fee waiver pursuant to 5 U.S.C. § 552(a)(4)(3)(iii). See Exhibit 5. She cited the decision of this court

in Clemente v. F.B.I. 741 F.Supp.2d 64, 74-77 (D.D.C.2010) in her support.

33. The FBI has not responded to CLEMENTE's request for a fee waiver.

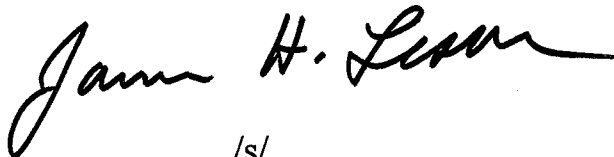
34. CLEMENTE has a legal right to a public interest fee waiver for the records she is seeking.

WHEREFORE, Plaintiff prays that this Court:

- 1) order defendants to make the requested information promptly available to her;
- 2) order defendants to grant plaintiff a waiver of search fees and copying costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) for records of the FBI's New York field office.
- 3) order defendants to conduct a thorough search for all responsive records;
- 4) order defendants to provide plaintiff a Vaughn index providing an inventory of all responsive records and itemizing and justifying all withholdings;
- 5) expedite this action in every way pursuant to 5 U.S.C. § 552 and 28 U.S.C. S 1657; and

6) order such further relief as may be warranted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James H. Lesar". The signature is fluid and cursive, with a long horizontal stroke at the end.

/s/

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January 25, 2012

Counsel for Plaintiff